

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement for dates of service 01/29/01 and 02/07/01?
- b. The request was received on 01/21/02.

### **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC 60 and Letter Requesting Dispute Resolution dated 03/29/02
  - b. HCFA-1450s/UB-92s
  - c. EOBs
  - d. Reimbursement data (EOBs from other carriers)
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/16/02
  - b. Carrier's payment methodology
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/03/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 04/04/02. The response from the insurance carrier was received in the Division on 04/17/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 03/29/02 states,  
"We are appealing the amount disallowed on the above mentioned claim. These charges are for **FACILITY FEES**, not professional fees. We feel that 35% & 36% paid on 2 lumbar epidural steroid injections is not fair or reasonable."
2. Respondent: Response dated 04/18/02 states,  
"SDC has failed to establish that the reimbursement it seeks for facility charges complies

with the Texas Workers' Compensation Act or TWCC Rules. Likewise, SDC has failed to establish that the reimbursement paid by \_\_\_\_ fails to comply with the Act and Rules.”

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307 (d)(1&2), the only dates of service eligible for review are 01/29/01 and 02/07/01.
2. The provider billed a total of \$1,060.70 on DOS 01/29/01 and \$1,063.18 on DOS 02/07/01, the two DOS in dispute.
3. The carrier reimbursed a total of \$376.71 for DOS 01/29/01 and \$376.72 for DOS 02/07/01. The EOBs state, “No MAR/ASC reimbursement is based on fees established to be fair and reasonable in your geographical area.”
4. The amounts in dispute are \$683.99 for DOS 01/29/01 and \$686.46 for DOS 02/07/01. The difference between the billed amounts and the reimbursement received on each DOS.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider has submitted reimbursement data to document what they consider fair and reasonable reimbursement. The provider has submitted EOBs from other carriers, these EOBs indicate that the provider has accepted from 85% to 100% of the billed amount as fair and reasonable reimbursement. The provider’s documentation does provide some evidence of fair and reasonable reimbursement.

The Carrier has also submitted reimbursement data to document what they consider fair and reasonable reimbursement, and to comply with Commission Rule 133.304 (i)(1-4). The carrier’s methodology incorporates information from 6 different states that have adopted a system to determine ASC charges based on intensity levels. The range is from 1 (low) to 8 (high), determined based on where the CPT code falls in the HCFA intensity grouper list. The carrier averaged the payments in each level for the 6 states and designed this as the base fee for each intensity level. The carrier also takes into account local economic factors and applies HCFA’s wage index factor to the base fees. If the specific area is not addressed in the wage index, the carrier uses the state average. Any extraordinary supply costs and lab tests are reimbursed as well, above and beyond the base fee and wage index.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine, based on the parties' submission of information, what best represents fair and reasonable reimbursement. The documentation submitted by the Requestor is not as persuasive as the methodology used by the carrier, which also conforms to the criteria of Sec. 413.011(d) of the Texas Labor Code, "to achieve effective medical care cost control." Therefore, no additional reimbursement is recommended.

The above Findings and Decision are hereby issued this 16<sup>th</sup> day of May 2002.

Larry Beckham  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.